STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS BELL TELEPHONE COMPANY	)	
	)	**ICC DOCKET NO. 00-0393**
	)	
Proposed Implementation of High Frequency Portion of Loop (HFPL)/Line Sharing Service.	)	
	)	
	)	

REPLY BRIEF OF AT&T COMMUNICATIONS OF ILLINOIS, INC.

AT&T Communications of Illinois, Inc. ("AT&T") hereby submits is reply brief in the above matter, responding to the Initial Briefs filed by Ameritech Illinois, Sprint and Staff. Pursuant to the schedule agreed to (and as modified by) the Parties and approved by the Hearing Examiner, reply briefs are due on or before December 18, 2000.

INTRODUCTION

In its Initial Brief, Ameritech Illinois takes the approach that it will do only what it perceives to be the minimum for approval under federal law – and no more. Ameritech Illinois states this position most plainly: "to the extent the Commission has any authority under federal law to review Ameritech Illinois' HFPL UNE tariff, that authority is limited to ensuring that the tariff complies with existing obligations imposed by the applicable federal law, namely, Section 251(c)(3) of the Act and the FCC's rules implementing Section 251(c)(3). … [I]rrespective of whether the scope of the Commission's review authority is governed by federal law or state law, the proper scope of this tariff proceeding is limited to ensuring that Ameritech Illinois' HFPL UNE tariff complies with the applicable federal law requirements. In this case, those federal requirements are the requirements that the FCC set forth in this *Line Sharing* Order, nothing more or less." Ameritech Init. Br. at 2-3. In other words, Ameritech Illinois will do only the smallest amount it can justify and will stretch that justification to unreasonable lengths. It will only reflect and satisfy the "current" requirements placed upon it by federal law, at least as Ameritech Illinois interprets things. This is manifestly insufficient for the competitive development of Illinois' telecommunications markets.

First, as explained more fully below, Ameritech Illinois has failed to even comply with the minimal standards required by the Act and the FCC. Second, Ameritech Illinois' HFPL tariff will actually impede competition from developing, a result that cannot be consistent with the federal Act much less the Illinois Public Utilities Act or this Commission's requirements. Finally, the Commission's role is not to simply and robotically enforce the FCC's rules. The Commission must use its well-developed expertise and unique knowledge of Illinois telecommunication markets to ensure that Illinois consumers are given the opportunity to keep pace with the technological developments impacting global telecommunications services.

Ameritech raises three arguments as to why it should not be required to tariff "line splitting." Ameritech's argument *du jour*, which it automatically raises in every Commission proceeding as a reason why the Commission cannot act pro-competitively, is that the Eighth Circuit's decision in *IUB I* and *IUBIII* precludes this Commission from requiring Ameritech to provide line splitting. The *IUB* line of cases has no bearing on -- and certainly does not preclude -- this Commission from requiring Ameritech to provide line splitting. In fact, not only have many state commissions, including ones in the Ameritech region, already required ILECs to provide line splitting consistent with the federal Act, but Ameritech has recently agreed via a Stipulation executed on November 30, 2000 in Wisconsin Public Service Commission Case No. 6720-TI-160 to provide line splitters for both line splitting and line sharing consistent with the recent Arbitration Award issued on October 12, 2000 in the AT&T/Ameritech Wisconsin arbitration in Docket 05-MA-120. As AT&T noted in its Initial Brief, the splitter is properly considered part of the attached electronics of loop and is necessary to allow CLECs to take advantage of the full features, functions and capabilities of the loop -- including the HFPL -- to which AT&T and all other UNE-P CLECs are clearly entitled to by right under the Act and the relevant FCC Orders.

Second, Ameritech contends that the *Line Sharing Order* concludes that Ameritech is not required to provide access to the HFPL over the UNE-P when Ameritech is not the voice provider. That is simply not true. The *Line Sharing Order* relates to line sharing only, and not line splitting. In fact, the *Line Sharing Order* expressly deferred to the states on the issue of line splitting and the FCC is currently considering the obligations of ILECs to provide line splitting.

Finally, Ameritech contends that Ameritech is not required to provide splitters under any circumstances and, therefore, cannot be required to provide them to UNE-P CLECs. Again, because the splitter is part of the loop functionality and is necessary to access the HFPL, Ameritech cannot meet its obligation of providing AT&T and other UNE-P CLECs with all features, functions and capabilities of the UNE-P loop -- including the HFPL -- *unless it provides the splitter.* In sum, unless Ameritech is required to provide line splitting, it will have a significant competitive advantage in the market for bundled voice and data services since Ameritech's failure to provide the splitter will severely limit the number of data CLECs with which a UNE-P CLEC can partner in order to provide the same bundle in competition with Ameritech. In fact, many data CLECs do not own their own splitters (Tr. 724), nor is there a need for them to self-provide a splitter in light of Ameritech's own admissions that it has provisioned over 57,000 splitters throughout Illinois (Tr. 457) and has provisioned splitters in all offices where data CLECs have requested them (Tr. 458). By refusing to provide the splitter to UNE-P CLECs providing voice service, Ameritech will effectively dissuade data CLECs from competing for those UNE-P provided voice lines. Sound public policy therefore dictates that Ameritech be required to provide AT&T and other UNE-P CLECs with a UNE loop that is fully capable of supporting xDSL service.

I. SCOPE OF AUTHORITY

A. This Commission Has The Authority To Require Ameritech Illinois To Tariff Line Splitting.

Ameritech's argument that this Commission cannot require Ameritech to tariff line splitting because to do so would somehow be inconsistent with the federal Act's interconnection agreement framework is illogical and erroneous. First, the Illinois Public Utilities Act ("PUA") expressly requires Ameritech to tariff *all telecommunications services it provides, without exception.* Specifically, Section 13-501 of the PUA provides:

> Sec. 13-501. Tariff -- Filing -- Form. No telecommunications carrier shall offer or provide telecommunications service unless and until a tariff is filed with the Commission which describes the nature of the service, applicable rates and other charges, terms and conditions of service, and the exchange, exchanges or other geographical area or areas in which service shall be offered or provided. The Commission may prescribe the form of such tariff and any additional data or information which shall be included therein.

220 ILCS 5/13-501. This requirement is not optional. It is mandatory.

Nor does the federal Act expressly provide that its framework in any way preempts state laws or regulations requiring the tariffing of line splitting or, for that matter, any unbundled network elements, methods of interconnection, etc. To the contrary, Section 251(d)(3) of the federal Act expressly preserves the state's right to enforce any state regulation, order or policy that establishes access (to network elements) and interconnection obligations so long as it does not substantially prevent implementation of the unbundling and access requirements of Section 251. Certainly a tariff requiring Ameritech to implement line splitting, thereby allowing AT&T and other UNE-P providers to access all features, functions and capabilities of the loop for the provision of xDSL service -- which the federal Act and the rules implementing it indisputably require Ameritech to provide -- does not substantially prevent implementation of Section 251. To the contrary, it promotes the unbundling requirements of Section 251 and the widespread deployment of bundled voice and data service offerings in Illinois.

Moreover, requiring Ameritech to tariff line splitting as a generally available offering is no different than, and is in fact akin to, an RBOC's option to file a statement of generally available terms, commonly referred to as an "SGAT." Section 252(f) of the federal Act provides that an RBOC "may prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirements of section 251 and the regulations thereunder and the standards applicable under this section." Indeed, the FCC's *Line Sharing Order* itself expressly contemplates that the rules adopted therein would be made available *outside of* the negotiation and arbitration process:

> *In addition to arrangements reached through section 252-negotiation and arbitration procedures*, Bell Operating Companies (BOCs) may prepare and file with a state commission a statement of generally available terms and conditions (SGAT) that they offer to comply with the requirements of section 251. Given the importance of certain and prompt implementation of line sharing to broadband competition, especially in the residential and small business markets, we encourage the BOCs expeditiously to amend their SGATs setting out the terms and conditions pursuant to which they will offer access to shared loops in compliance with the requirements set out in this order. We note that pursuant to section 251(i), competitive carriers will be able to obtain access to the high frequency portion of the loop at the same rates, terms, and conditions offered in any approved interconnection agreement, as well as the BOCs' SGATs.

FCC *Line Sharing Order,* ¶167 (emphasis supplied). Clearly, then, a state law requiring Ameritech to tariff such terms, conditions and rates is consistent with the federal framework.

Lest Ameritech's arguments mislead the Commission, there is nothing magical about the fact that an unbundling obligation is embedded in an interconnection agreement rather than in a tariff. It is still generally available as a practical matter -- just as tariffed provisions are -- pursuant to the nondiscrimination provisions contained in Section 251(i) of the federal Act. This Section expressly provides that "A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." Thus, Ameritech's argument does nothing more than elevate form over substance, and should be rejected.

In fact, taking Ameritech's argument to its logical conclusion would mean that Ameritech is not required to tariff any element or service it is required to provide pursuant to Section 251 of the federal Act, *regardless of whether Ameritech is also required to provide it as a matter of state law.* For example, this would give Ameritech the right to withdraw its unbundled network element tariff, its shared transport tariff (which Ameritech was required to file pursuant to the Commission's Order approving the SBC-Ameritech merger), its Platform tariff, its dark fiber tariff, its subloop tariff, etc. Certainly even Ameritech, which has been filing and revising these tariffs for several years, does not legitimately believe that it is not required to file them pursuant to Section 13-501 of the PUA, just as it filed this tariff in an attempt to meet the requirements of the FCC's *Line Sharing Order*.

B. This Commission's Authority Is Not Limited To Mimicking Federal Law.

While AT&T agrees with Ameritech that its HFPL UNE tariff cannot be "just and reasonable" unless it complies with federal law, AT&T disagrees with Ameritech that its tariff complies with federal law, and disagrees with Ameritech that its tariff must be considered "just and reasonable" if it complies with the minimum standards established by federal law. No party to this proceeding disputes the fact -- raised time and time again before this Commission -- that the federal standards and obligations are minimum standards, and that states can impose additional standards and obligations so long as they are not inconsistent with federal law. Indeed, as discussed at length later in this brief, several state commissions have already done so by requiring ILECs to provide line splitting.

C. AT&T Is Not Collaterally Attacking The *Line Sharing Order*.

Moreover, contrary to Ameritech's misrepresentation, AT&T is not collaterally attacking the *Line Sharing Order*. Ameritech Init. Br. at 12-13. As AT&T witness Mr. Turner testified and as AT&T discusses below, AT&T is not attacking the *Line Sharing Order*. In fact, AT&T agrees that the *Line Sharing Order* does not resolve AT&T's line splitting proposal; thus, AT&T requests a Commission order in this proceeding requiring Ameritech to provide it, consistent with Ameritech's recent voluntary agreement to provide line splitting in Wisconsin.

III. LINE SPLITTING

A. Contrary To Ameritech's Argument, The Most Recent Eighth Circuit Decision On The FCC's "Additional" UNE Combination Rule Does Not Preclude The Commission From Requiring Ameritech To Insert Splitters As A Functionality Of The Existing Loop.

Ameritech claims that the Eighth Circuit's recent decision in Iowa Utilities Board[1] precludes the Commission from requiring it to provide AT&T with ILEC-owned splitters. (Amer. Init. Br. at 46-49). It is wrong. The Eighth's Circuit most recent decision reaffirmed its prior ruling vacating the FCC's "additional combination rules," (47 C.F.R. § 57.315(c)-(f)), which included the combination of elements "not ordinarily combined" in the ILEC's network and ILEC/CLEC element combinations.[2] That ruling

1 Iowa Utils. Bd. v. FCC, 219 F.3d 744 (8th Cir. July 18, 2000).

2 Section 51.315(c) of the FCC's rules provides that, "[u]pon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent's network, provided that such combination is (1) technically feasible; and (2) [w]ould not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network." 47 C.F.R. § 51.315(c). Section 51.315(d) provides that "[u]pon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements with elements possessed by the requesting telecommunications carrier in any technically feasible manner." 47.C.F.R. § 51.315(d).

is simply irrelevant to AT&T's request that Ameritech insert splitters *as a functionality of AT&T's existing UNE-P loops*.

1. Insertion of A Splitter Does Not Constitute A New Combination Of Network Elements

Even assuming Ameritech were correct, which it is not, AT&T's request for line splitting does not require Ameritech to combine new, or additional, elements. Rather, AT&T is simply asking for a combination of the existing elements that it is entitled to under Rule 315(b).[3] Under Rule 315(b), which was originally vacated by the Eighth Circuit in 1997 but reinstated by the Supreme Court,[4] Ameritech remains obligated to combine an unbundled loop, unbundled switching and unbundled transport for voice CLECs (including other preassembled elements such as signaling and functionalities such as loop conditioning) given that it continues to combine these elements for itself. In fact, if Ameritech was not combining an unbundled loop, switching and transport for itself, it would be unable to continue to provide voice service to its customers who are taking advantage of line sharing by obtaining data services from AADS or a data CLEC.

Ameritech's argument is premised entirely on the erroneous assumption that AT&T's request for line splitting entails a separate network element that results in a new combination of elements resulting in a "modified UNE-P." AT&T, however, is only requesting the combination of existing loop, switching, and transport unbundled network elements that currently comprise UNE-P. Even Ameritech admits (in one of the few passages on which Ameritech and AT&T agree) that the splitter is *not* a network element,

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[3] 47 C.F.R. § 51.315(b) ("[e]xcept upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.")

[4] <u>Iowa Utils. Bd. v. FCC</u>, 120 F.3d 753 (8^{th} Cir. 1997), <u>reversed in relevant part</u>, <u>AT&T Corp. v. Iowa Utils. Bd.</u>, 119 S.Ct. 721, 736-738 (1999). The Supreme Court expressly rejected the ILECs' construction of the statute, agreeing instead with the FCC that ILECs must not be permitted to disconnect previously connected elements, solely to "impose wasteful reconnection costs on new entrants." <u>AT&T Corp. v. Iowa Utils. Bd.</u>, 119 S.Ct. at 737.

unbundled or otherwise. Amer. Init. Br. at 58-59. Rather, the splitter constitutes a necessary functionality of the unbundled loop element akin to the loop conditioning that Ameritech routinely performs. AT&T Schlackman Cross Ex. 1, pp. 15-16; AT&T Ex. 2.0, p. 14.

AT&T is not, therefore, seeking a new combination of elements. It is simply requesting that attached electronics be added to the loop to access its full functionality, consistent with the Act, FCC's *First Report and Order* and the FCC's *UNE Remand Order*. Specifically, Section 251(c)(3) of the Act requires Ameritech to provide nondiscriminatory access to all network elements on an unbundled basis at any technically feasible point. The Act defines "network element" to include "features, functions, and capabilities that are provided by means of" such element. 47 U.S.C. 153(29). ¶167 of the FCC's *UNE Remand Order* modified the definition of the loop network element to include *all features, functions and capabilities of the loop, including attached electronics.*

Having defined the loop element, paragraph 292 of the FCC's *First Report and Order* interprets Section 251(c)(3) to require ILECs to provide requesting carriers with *all* of the functionalities of a particular element so that requesting carriers can provide *"any telecommunications service that can be offered by means of the element."* (emphasis added). This includes all functionalities of the loop – including the high frequency spectrum of a UNE-P loop -- so that a carrier can provide xDSL service. Moreover, 47 C.F.R. 51.307(c) requires an ILEC to provide "all of the unbundled network element's features, functions and capabilities, in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element." There is no question that Ameritech must provide the splitter as part of the attached electronics of the loop in order to allow UNE-P CLECs to use the UNE loop they purchase to provide xDSL service, which is clearly one the telecommunications services that can be offered using the loop element.

Accordingly, the Eighth Circuit's decision is of no moment to AT&T's request that its existing UNE-P combination include the insertion of ILEC-owned splitter functionality.

2. Even If Line Splitting Did Require New Network Element Combinations, This Commission Is Free To Require Them.

Moreover, even if AT&T's request for line splitting could, under some strained interpretation, constitute a request for combinations of network elements that do not already pre-exist in Ameritech's network, this Commission is not precluded by the *IUB* line of cases from requiring Ameritech to provide line splitting. This Commission has the authority to require Ameritech to provide combinations of UNE elements that are ordinarily or customarily combined in its network, and should do so. There is no question that Ameritech ordinarily provides the splitter to data CLECs for line sharing. Given the fact that the same network configuration supports both line sharing and line splitting, Ameritech cannot seriously contend that it does not ordinarily install the splitter into the existing loop/port combination. Simply stated, any combination of network elements that Ameritech Illinois ordinarily combines in its network and that permits AT&T (and other CLECs) to provide a telecommunications service to an end user should be made available to AT&T by Ameritech Illinois. Ameritech Illinois should be required to provide UNE combinations to allow CLECs to provide both voice and advanced services to end user customers, just as Ameritech Illinois does for its retail customers.

a. A Reasonable Reading of FCC Rule 315(b) Compels The Conclusion that Ameritech is Currently Obligated to Combine UNEs Ordinarily Combined in its Network

Regardless of Ameritech's own confusion about its obligations, its legal argument that it is not required to provide any new combinations, including combinations of elements it currently or ordinarily combines for itself, is dubious at best. A reasonable reading of 47 C.F.R. Section 315(b) can encompass combining UNEs that the ILEC currently combines, even if they are not yet specifically connected. FCC Rule 51.315(b), 47 C.F.R. 51.315(b), as definitively construed by the FCC in the First Report and Order, and affirmed by the United States Supreme Court, continues to have the same meaning and effect it had when the FCC adopted the rule in 1996. In the First Report and Order, the FCC concluded that ILECs should be required to combine elements when technically feasible to do so at the request of CLECs, because CLECs often are not able to combine them for themselves.[5] The rules enforcing this obligation clarified that this obligation existed in two distinct situations: when the elements are "ordinarily combined" in the ILEC network, and when the elements are not ordinarily combined.[6] The former obligation is set out in Rule 51.315(b), and the latter, which potentially involved claims that the requested combinations were not technically feasible, in Rules 51.315(c)-(f). The actual language used in Rule 51.315(b) was that ILEC combination was required of elements that the ILEC "currently combines."

In paragraph 296 of the First Report and Order, the FCC first explained that "currently" was intended to mean "ordinarily." That explanation was hardly necessary; this understanding of "currently combines" is clear enough from the context of the rule itself. On its face, Rule 51.315 distinguishes between the types of combinations that ILECs "currently combine," *see* Rule 51.315(b), and those the ILECs do <u>not</u> "ordinarily" combine, *see* Rule 51.315(c). The FCC distinguished between these two types of

5 First Report and Order at paragraphs 292-297.

6 *Id.*

combinations because only the latter raised issues of technical feasibility -- there is no question that a combination that currently or ordinarily exists in the ILECs' networks is technically feasible. Therefore only truly new types of combinations were intended to be addressed in Rules 51.315(c) - (f), which contain the rules to address claims of technical infeasibility.

The Eighth Circuit's decision to vacate Rule 51.315(b) was reversed by the Supreme Court and the rule was reinstated. The question of the validity of FCC Rules 51.315(c) - (f) was addressed by the Eighth Circuit in its July 18, 2000 decision in *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8^{th} Cir. July 18, 2000) ("*IUB III*"). As discussed below, the Eighth Circuit's decision in *IUB I* did not hold that requiring ILECs to combine elements not ordinarily combined in their networks violates TA96 – it simply found that TA96 does not compel such a requirement. State commissions do have the authority to order combinations. Nothing in TA96 that prohibits new combinations of UNEs.

However, Ameritech's position is that the term "currently" in Rule 51.315(b) refers to individual customer situations and means "preexisting" or "as is." In other words, Ameritech attempts to impose an extremely narrow reading of 315(b) in order to justify its position that it is not required to install the splitter into the admittedly existing loop/port combination. Ameritech's narrow reading limits combinations to specific customer combinations that are presently in place, rather than the <u>type</u> of combinations that ILECs currently provide to themselves and customers as a matter of course. Such a narrow interpretation of Rule 51.315(b) would make no sense in light of the FCC's previous regulatory scheme and the sound policies behind it. Combining elements that are currently or ordinarily combined in the ILEC network (a loop and a port, for example) raises no issues of technical feasibility, and plainly is meant to be addressed in Rule 51.315(b), and not in the technical feasibility Rules 51.315(c) - (f).

Additionally, such a narrow construction of 315(b) would produce discriminatory results. For example, based on Ameritech's interpretation of Rule 51.315(b), it refuses to install a splitter because to do so would require separating the pre-existing loop and port combination, and then reconnecting *the same loop and port* after the splitter is installed. According to Ameritech, once the loop and port elements are temporarily separated to insert the splitter, they are no longer "currently combined" for that particular customer. As discussed above, Ameritech can and would provide the same combination of elements for itself to serve the same customer. This is inarguably discriminatory. The FCC recognized in paragraph 481 of the *UNE Remand Order* that the Supreme Court upheld Rule 51.315(b) "based on the nondiscrimination language of section 251(c)(3)" of TA96. Therefore, any interpretation of Rule 51.315(b) that produces such discriminatory results should be expressly rejected.

For all of these reasons, the Examiner and the Commission should reject Ameritech's arguments that it is not required to provide the type of combinations that it ordinarily combines for itself and its retail customers as a matter of course. Ameritech is required by Rule 315(b) to provide CLECs with combinations of UNEs that it ordinarily provides to itself and to its retail customers as a matter of course. To the extent there is any question as to whether Ameritech is required to do so, and there is not, and to the extent recombining *the same loop and port* after installing a splitter is tantamount to requesting a combination that does not pre-exist but that Ameritech ordinarily provides to itself, which it is not, the Commission has the full authority to order Ameritech to provide combinations of elements that do not "currently exist" in its network.

b. The *Iowa Utilities Board* Line of Cases Does Not Preclude This Commission From Requiring Ameritech To Provide New UNE Combinations Under Either State Or Federal Law.

Even if 47 C.F.R. 315(b) did not require impose on Ameritech an obligation to combine UNEs ordinarily combined in its network, which it does, it is clear that the Commission has the authority to require Ameritech to combine UNEs in any event. Ameritech Illinois' position on providing UNE combinations not "currently combined" (as Ameritech defines it) in its network is that the federal Act, as interpreted by the Eighth Circuit in *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997) (subsequent history omitted) and *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir., July 18, 2000) cannot be read to require Ameritech Illinois to provide UNEs that are "ordinarily combined" or, for that matter, any UNE combinations where specific facilities are not already combined in its network because, as Ameritech Illinois contends, CLECs want Ameritech Illinois to affirmatively combine UNEs at the CLECs' request.

Certainly the recent *IUB III* decision relied upon so heavily by Ameritech Illinois has not changed its obligation to offer UNE combinations. *IUB III* simply has no limiting effect on the Commission's ability to require Ameritech Illinois to offer combinations of network elements ordinarily or generically combined in its network. The effect of the Eighth Circuit's decision can be stated simply. It vacated rules of the FCC that, while in effect, bound state commissions and constrained their decisions regarding UNE combinations and pricing.

Notwithstanding *IUB III*, state commissions such as this one remain free to act based on their own interpretations of the Act, and to exceed the scope of current FCC regulations on UNE combinations. The Eighth Circuit's interpretation *of the Act* (as distinguished from the FCC's regulations pursuant to the Act) will control only within the Eighth Circuit. Nothing in the Hobbs Act or any other statute or legal principle elevates a regional court of appeals to the level of the Supreme Court for purposes of this case and forbids other authorities from reaching different conclusions about the meaning of the Act, just as they may do in any other case. Each state commission's decision will be subject to review in the appropriate federal district court and court of appeals. State commissions outside the Eighth Circuit are thus not bound by the *IUB I* and *IUB III* decisions, and their decisions will be upheld if an appropriate Court of Appeals disagrees with the Eighth Circuit's rulings.

Moreover, to the extent Ameritech Illinois bases its claim that it has no obligation to combine elements in a nondiscriminatory fashion on the rationale of the Eighth Circuit with respect to FCC Rules § 315(c)-(f), its claim is based upon a fallacy. When vacating these rules §315 (c)-(f) (in 1997), the Court of Appeal's decision was premised on the view that: (a) the ILECs would prefer to grant competitors access to combine network elements themselves, and (b) that the FCC's rules otherwise required the ILECs to perform unreasonable extra work. For instance, the court emphasized that "the Act does not require the incumbent LECs to do <u>all</u> the work." *IUB I*, at 813 (emphasis in original). The latter assumption is invalid by definition with respect to elements that are "ordinarily combined."

It is for these reasons that courts outside of the Eighth Circuit have recognized their obligation to apply what they believe to be the correct interpretations of the Act, even when the Eighth Circuit has expressed a contrary view. For example, the Ninth Circuit upheld an interconnection agreement requiring US WEST to provide combinations of network elements despite the fact that the Eighth Circuit had struck down the FCC's rules upon which the state commission had relied in imposing the requirements. *MCI Telecommunications Corp. v. US WEST Communications*, 204 F.3d 1262, 1268 (9th Cir. 2000). In so holding, the Court observed:

> The Eighth Circuit's decision to vacate the FCC regulation certainly still stands, and is immune under the Hobbs Act from collateral attack. *See* 28 U.S.C. § 2342; *US WEST Communications v. MFS Intelenet*, 193 F.3d 1112, 1120 (9th Cir. 1999). All this means for the purposes of the present appeal is that the Act does not currently mandate a provision requiring combination. Our task is to determine whether such a provision "meets the requirements" of the Act, *i.e.*, to decide whether a provision requiring combination violates the Act.

Id. Finding the Eighth Circuit's interpretation of the Act unpersuasive, the Ninth Circuit ruled that *the state commission could mandate combinations under the Act*. *Id.* And US WEST's petition for certiorari, which erroneously claimed that the Ninth Circuit's decision was inconsistent with the Hobbs Act, was then denied by the Supreme Court. *See US WEST Communications, Inc. v. MFS Intelenet, Inc.*, 120 S. Ct. 2741 (2000).

Likewise, the federal district court in Colorado rejected the notion that the Eighth Circuit's construction of the Act precluded other courts from adopting a different interpretation. *US WEST Communications, Inc. v. Hix*, Civ. Action No. 97-D-152, slip op. (D. Co. June 26, 2000). Like the Ninth Circuit, that court held that the fact that the Eighth Circuit had vacated certain FCC rules "does not compel the conclusion that" interconnection agreements incorporating those rules "are prohibited by the Act." *Id.* at 14. "Instead, the Court must question whether the interconnection agreements . . . are consistent with the Act, independent of [the FCC's rules]." *Id.* Moreover, on August 28, 2000, that court denied US WEST's Motion to alter the judgment on the basis of the Eighth Circuit's decision on remand in *IUB III*, correctly recognizing that the latter decision "is not a change in controlling legal authority." *US WEST Communications v. Hix*, Civ. Action No. 97-D-152, Order Denying Motion to Alter or Amend Judgment (D. Co. Aug. 28, 2000).

In addition, the U. S. Court of Appeals for the Fifth Circuit has held that state commissions are not precluded by the Act from requiring ILECs to provide combinations of elements not ordinarily combined in the ILECs' networks. *Southwestern Bell Telephone Co. v. Waller Creek Communications, Inc.*, 2000 WL 1091669 (Aug. 21, 2000 5th Cir.).

Each of these federal court decisions was issued *after* the FCC rules that had required ILECs to combine separate elements not ordinarily combined in the ILEC's network were vacated by the Eighth Circuit. The *Waller Creek* decision was issued after the Eighth Circuit's recent decision in *IUB III*. The *Waller Creek* Court made clear that the Eighth Circuit decision had no bearing on the authority of commission's outside of the Eighth Circuit to order ILECs to combine network elements not currently combined in ILEC networks. In rejecting the notion that such a requirement would somehow violate the Act, the *Waller Creek* Court held:

> Further there is nothing "illegal" about the provision requiring SWBT to combine network elements for Waller or any other CLEC. Nothing in the Telecommunications Act forbids such combinations. Even if

> the Eighth Circuit's decision on this issue is correct - - which we do not decide today - - it does not hold that such arrangements are prohibited; rather, it only holds that they are not required by law.

Waller Creek, 2000 WL 1091669, at *7. Therefore, even if one assumes that Ameritech Illinois' interpretation of the FCC's Rules and Eighth Circuit opinion is literally correct (and AT&T certainly does not concede that it is), such a view does not mean that the Illinois Commerce Commission cannot enforce a rational combinations policy through its own authority.

In fact, in its recent Order in the AT&T/Ameritech Indiana arbitration requiring Ameritech to provide new combinations, the Indiana Commission, in discussing the effect of the *IUB* line of cases, concluded that rather than limiting the authority of state commissions, the *IUB* line of cases actually *expands* the authority of state commissions to require ILECs to provide UNE combinations to CLECs:

> Although the *IUB* cases served to vacate certain aspects of Rule 51.315, this line of cases does not effect our authority to require Ameritech Indiana to provide additional combinations of UNEs to AT&T.
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> * * * * *
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> The *IUB* line of cases determined that the FCC exceeded its authority when it determined that all ILECs would be required to provide UNE combinations at the request of the CLECs. *This line of cases does not limit a state commission's authority to order an ILEC to combine network elements at the request of a CLEC in order to encourage competition in the local exchange market*.
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> * * * * *
>
> Like the Ninth Circuit, we are persuaded that we have the discretionary authority to require an ILEC to provide combinations of network elements to CLECs. {footnote omitted} The effect of the *IUB* line of cases and its progeny is to *expand the authority of state commissions, not to limit them.* The Eighth Circuit, finding that the FCC exceeded its authority in promulgating Rule 51.315, returned to state commissions the authority to

> require ILEC's to combine UNEs at the request of CLECs so long as such action comports with the purpose of the Act and assists in breaking down the entry barriers into the local exchange market. *See MCI Telecom.*, 204 F.3d at 1268.

Indiana Utility Regulatory Commission Order, Cause No. 40571-INT-03, pp. 46-47 (Nov. 20, 2000)(emphasis supplied). Thus, even assuming that line splitting requires that Ameritech provide combinations of network elements ordinarily combined in its network, federal law does not preclude this Commission from ordering line splitting.

c. Other States Have Already Required Ameritech To Provide Line Splitting, And Ameritech Has Agreed To Provide It.

Several state commissions have already ordered ILECs to provide line splitting. As SBC-Ameritech witness Ms. Schlackman acknowledged, both the Texas and the Wisconsin commissions have required SBC and Ameritech, respectively, to provide line splitting. The Texas Revised Arbitration Award (AT&T Schlackman Ex. 1.0) determines that the splitter is part of the loop and is necessary to provide the full features and functions of the loop, that there is no technical distinction between line sharing and line splitting, that failure to provide line splitting "could prove to be crippling from a competitive standpoint" and would "significantly prohibit[] UNE-P providers from achieving commercial volume," that it is discriminatory for SWBT to provide the splitter in a line sharing context but not in a line splitting context, and that line splitting should be provided as a matter of "sound public policy."

In addition, the Arbitration Panel in the AT&T/Ameritech Wisconsin arbitration recently determined that the splitter is a part of the loop and required Ameritech Wisconsin to provide line splitting to AT&T:

> The Panel finds that the HFPL is a loop functionality. The high frequency capacity is clearly a capability of the loop. The splitter can therefore be considered ancillary equipment that allows access to that functionality, in much the same way that a multiplexer allows access to the multiple voice grade circuits on a channelized T1 line. Ameritech has not shown that requiring such ancillary equipment would cause harm to its network or operations. The Panel, therefore, finds that a splitter must be provided as ancillary equipment, when requested, to allow AT&T access to the HFPL on unbundled loops.
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> * * * * *
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> The Panel notes that AT&T has stated it will adopt a UNE-P entry strategy in many areas. One advantage of a UNE-P strategy is that AT&T will not need to collocate in many central offices, since it can utilize shared transport to route calls to customers to and from many Ameritech wire centers. However, Ameritech's refusal to offer line splitting, or other methods of accessing the HFPL, as UNEs means that AT&T must collocate in order to provide high-speed services that utilize the HFPL. The Panel, therefore, finds that AT&T will be impaired if line splitting is not available, and if the splitter is not available as a UNE.

Public Service Commission of Wisconsin Arbitration Award, Docket 05-MA-120, October 12, 2000, pp. 79-80. The Wisconsin Arbitration Panel also determined that, because it ordered Ameritech to provide line splitting in order to provide the functionalities inherent in unbundled loops, it must also provide the OSS systems that support such requests. *Id*. at 84.

In fact, not only is Ameritech Wisconsin required to provide line splitting to AT&T in Wisconsin consistent with the above conclusions, but Ameritech Wisconsin recently *voluntarily agreed to provide line splitting* generally consistent with the Arbitration Award in the AT&T/Ameritech Wisconsin arbitration. On November 30, 2000, Ameritech Wisconsin executed a Stipulation in Public Service Commission of Wisconsin Docket 6720-TI-160, *Investigation Into Ameritech Wisconsin Operational Support Systems*, agreeing to provide line splitting to numerous other CLECs as part of its Resolution of Specified OSS Enhancements and Process Improvement Issues. Specifically, Ameritech Wisconsin agreed to "provide line splitters for both line splitting and line sharing, as determined in the interconnection agreement approved by the Commission in the pending AT&T/Ameritech arbitration, Docket 05-MA-120 (Arbitration Award at 73-83), subject to its rights to seek appropriate review of the Commission's final determination." Stipulation, p. 8, a copy of which is attached for the Commission's convenience as Attachment 1.

Moreover, the Indiana Commission on November 20, 2000 issued an order requiring Ameritech to provide line splitting. In concluding that the splitter is ancillary equipment necessary to access the high frequency capacity of the loop and that line splitting will further competition by allowing data CLECs to compete for the HFPL of *all* capable lines, rather than only those lines over which Ameritech provides voice service, the Indiana Commission stated:

> [T]he Act provides for dual oversight of telecommunications providers through both federal and state regulatory agencies. Specifically, the Act endowed the FCC with specific authority and grants the state regulatory agencies additional authority to impose requirements on ILECs that are consistent with the requirements of the Act. Accordingly, in viewing the relevant FCC orders with respect to this issue, we do so with the knowledge that the order of this Commission is not limited by the action of the FCC, so long as our action is consistent with the Act of Congress, 47 U.S.C. ¶¶ 251(d) and 261. On this issue, we exercise our authority to order action consistent with the intent of the Act, and recognize the high frequency and low frequency aspects of a copper line as separate UNEs which Ameritech must provide without respect to whether it is providing high or low frequency service directly to the end user.
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> * * * * *
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> We find that line splitting encourages entrants into the local exchange market, furthers competition within the local market and is consistent with the provisions of the Act. Line splitting will allow data LECs to compete

> for the HFPL of all capable lines, rather than only those lines in which voice service is provided by Ameritech.
>
> * * * * *
>
> The Commission therefore finds that the HFPL is a loop functionality and that the high frequency capacity is a capability of the loop. We further find that a splitter is considered ancillary equipment that allows access to that functionality. A splitter shall be provided as ancillary equipment when requested to allow AT&T access to HFPLs.

Indiana Utility Regulatory Commission Order dated November 20, 2000, Cause No. 40571-INT-03, pp. 67-68.

In sum, federal law does not prohibit state commissions from requiring ILECs to provide line splitting. In fact, several state commissions have already required Ameritech and its affiliates to provide line splitting. Significantly, Ameritech has already voluntarily agreed, by Stipulation, to provide line splitting in Wisconsin. Illinois consumers are entitled to the same competitive benefits; thus, this Commission should require Ameritech to provide line splitting as well.

B. The FCC Has Not Prohibited Line Splitting.

At various places in its Initial Brief Ameritech Illinois parses together snippets from FCC orders in an attempt to create the impression that the FCC has prohibited line splitting – i.e., nondiscriminatory provisioning of the HFPL when a CLEC is the voice provider (via, *e.g.*, UNE-P). Ameritech Illinois points to the FCC's *Line Sharing Order*[7]

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[7] Third Report and Order in CC Docket NO. 98-147 and Fourth Report and Order in CC Docket No. 96-98, *In the matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 & 96-98, FCC 99-355 (Rel. Dec. 9, 1999) ("Line Sharing Order").

and its *Texas 271 Order*.[8] Neither of these orders stands for the proposition that this Commission may not require Ameritech Illinois to provide line splitting on terms and conditions different from what Ameritech Illinois has "volunteered" to do.

For example, Ameritech Illinois points to paragraph 72 of the *Line Sharing Order* as establishing what ILECs are <u>not</u> required to offer but then never explains what text from this part of the FCC's order precludes this Commission from ordering line splitting. *See* Ameritech Init. Br. at 51. In fact, the FCC is silent on the issue of line splitting in its *Line Sharing Order*. In the *Line Sharing Order*, the FCC only established what an ILEC's obligation was vis-à-vis a data use of the High Frequency Spectrum ("HFS") of the loop <u>when the ILEC is the voice provider</u>. That was the extent of the FCC's decision. Ameritech Illinois stretches the language of this order far beyond its plain intent.

In fact, Ameritech Illinois' references to the *Texas 271 Order* make clear that the FCC did not even consider line splitting in its *Line Sharing Order*, and therefore, made no finding that would prohibit a state commission from ordering line splitting. *See Texas 271 Order*, ¶ 324-325. In the *Texas 271 Order*, the FCC expressly reserved its decision on the issue of whether an ILEC is required under § 251(d)(2) to provide access to an ILEC splitter, noting that it would decide this issue in response to petitions for reconsideration in its *UNE Remand Order* docket. *Id.*, ¶ 328. Most importantly, the FCC clearly found that this issue could be decided by a state commission: "In any event, the parties' entire dispute on the question of line splitting is a recent development and is subject to further negotiation and, if necessary, arbitration before the Texas

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[8] *See* <u>Memorandum Opinion and Order</u>, *In the Matter of Application of SBC Communications Inc., Southwestern Bell Tel. Co., and Southwester Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance,* CC Docket No. 0065, FCC 00-238, (Rel. June 30, 2000) ("<u>Texas 271 Order</u>").

Commission." *Id.*, ¶ 239. In other words, the FCC made no decision on line splitting in its *Texas 271 Order*. It simply found that under the then present circumstances, SWBT's failure to offer line splitting as AT&T requested would not prevent the FCC's approval of SWBT's § 271 application. This is a far cry from the reaffirmation that Ameritech Illinois claims the FCC made in its order.

C. This Commission Is Not Precluded From Requiring Ameritech to Own And Deploy Splitters; In Fact, Ameritech's Obligation To Provide The Full Features, Functions And Capabilities Of The Loop To Enable A UNE-P CLEC To Provide xDSL Service Requires It To Own And Deploy Splitters.

Ameritech's argument that it is not required to own and deploy splitters is curious given the fact that Ameritech already owns and deploys splitters in all central offices where data CLECs have requested them. Tr. 457-458. In any event, Ameritech is wrong. First, it is required to own and deploy splitters because without them, it cannot live up to its unbundling obligations under both federal and state law. Second, the FCC orders do not preclude this Commission from ordering Ameritech to provide splitters, as several state commissions have already correctly determined.

1. Ameritech Must Provide The Splitter In Order To Make All Features, Functions And Capabilities Of The UNE Loop Available To UNE-P CLECs In Order To Provide Data Services.

Ameritech maintains that a Commission order directing it to provide access to splitters when they are sought by CLECs would be inconsistent with the FCC's *Texas 271 Order* and the *Line Sharing Order*.[9] First and foremost, AT&T reiterates the obvious and inescapable fact that *unless Ameritech provides the splitter, it cannot comply with its indisputable obligation to provide AT&T and other UNE-P CLECs with the full features, functions and capabilities of a UNE-P loop.* The Texas Arbitration Award could not be

[9] Ameritech Init. Br. at 57-58.

more clear: "SWBT is required to provide the splitter in order to allow AT&T to access the full functionality of the loop." AT&T Schalckman Cross Ex. 1.0, p. 22. Thus, for this reason alone, Ameritech is required to own and deploy splitters.

2. The *Line Sharing Order* And *Texas 271 Order* Do Not Preclude This Commission From Requiring Ameritech To Own And Deploy Splitters.

Moreover, Ameritech is not correct that the *Line Sharing Order* and *Texas 271 Order* preclude this Commission from ordering Ameritech to own and deploy splitters. In fact, as discussed above, many state commissions in the SBC-Ameritech region already require Ameritech to own and deploy splitters. In addition, the FCC in the *Texas 271 Order* expressly recognized that this issue could be subject to review – and resolution in AT&T's favor -- at a state commission.

Indeed, far from sanctioning Ameritech's refusal to provide access to splitters to allow UNE-P providers to access the high frequency spectrum of the loop, the FCC made a far narrower holding that *at the point in time that SWBT filed its Texas 271 Application* (April 2000), an ILEC had no *present* obligation to provide access to the splitter under the *Line Sharing Order* or *UNE Remand Order*.[10] The FCC expressly declined from passing on AT&T's claims, stating that the issue was "unripe for our review here" and concluding that "the parties" entire dispute on the question of line splitting is a recent development and is subject to further negotiation and, if necessary, arbitration before the Texas Commission."[11] Thus, nothing in the FCC's *Texas 271 Order* precludes this

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[10] See Texas 271 Order ¶ 328.

[11] Id. ¶ 329.

Commission from concluding, under either federal or state law, that Ameritech should be required to provide access to splitters when they are requested by CLECs.

In fact, and tellingly, the Pennsylvania Public Utility Commission, in its Procedural Order dated November 29, 2000 in Docket No. M-00001435, *Consultative Report on Application of Verizon Pennsylvania, Inc. for FCC Authorization to Provide In-Region InterLATA Service in Pennsylvania*, invited input from all interested parties on several issues it intends to evaluate in preparing its recommendation to the FCC on Verizon Pennsylvania's application for Section 271 authority. The Pennsylvania Commission singled out line splitting as a "critical" issue in evaluating Verizon's application for 271 authority:

> We recognize that explicit federal standards governing the delivery of line splitting have not yet been developed or imposed on the states. Nevertheless, we believe that line splitting appears to be a critical component in the provision of competitive telecommunications services today. Consequently, we conclude that line splitting should be evaluated as part of our determination as to whether Verizon's local markets are open to competition. An evaluation of line splitting, in light of the New York experience and evolving regulatory expectations brought about by technological change, gives us a better degree of assurance that Verizon's voice and data competitors are able to provide Pennsylvania customers with equivalent service and that Verizon is not hindering the deployment of such advanced services to Pennsylvania customers.

Order dated November 29, 2000, pp. 6-7. Certainly if the *Line Sharing Order* and the FCC's *Texas 271 Order* precluded state commissions from requiring line splitting, the Pennsylvania Commission would not have singled it out as a critical issue in making its recommendation to the FCC on Verizon's 271 application.

Similarly, Ameritech claims that the Commission may not require it to provide splitters to AT&T because the FCC found that ILECs "may choose to own and provide splitters to CLECs but they are under no obligation to do so."[12] Paragraph 76 of the *Line Sharing Order,* however, does not preclude a Commission finding that Ameritech must own standalone splitters for use by CLECs who need splitters in order to engage in line splitting. As an initial matter, as shown above, the provisions in the *Line Sharing Order* relied upon by Ameritech simply do not apply to line splitting. Thus, paragraph 76 does not apply at all to AT&T's request here.

Furthermore, paragraph 76 and the several paragraphs that follow in the *Line Sharing Order* were developed against a backdrop of claims by the ILECs that their ownership and maintenance of splitters was essential, as a matter of both law and policy. And by its own terms, paragraph 76 simply acquiesces in the request of incumbent LECs that they be allowed to "maintain control over the loop and splitter equipment" as against the claims of certain data CLECs who also argued "for the right to control the splitter" in the line sharing context.[13] Indeed, the Line Sharing Order goes on to emphasize that an ILEC's ability to retain control over the splitter depends upon its willingness "to accommodate the competitive LEC's preferred technology." Line Sharing Order, ¶79. Thus, the FCC limited the discretion that it afforded incumbent LECs with respect to the splitter in line sharing, precisely to ensure that ILECs would not abuse access to splitters in ways directly analogous to what Ameritech is attempting here. In paragraph 79 of the *Line Sharing Order,* the FCC directs that the state may allow CLEC ownership as an

[12] Ameritech Init. Br. at 56-57. (citing Line Sharing Order ¶¶ 76, 146).

[13] *Line Sharing Order* ¶ 76.

alternative to ILEC ownership.[14] Thus, the *Line Sharing Order* does not contemplate that ILECs could force CLECs to own splitters.[15]

Along these same lines, Sprint contends that Ameritech should be ordered to provide line splitting when Ameritech voluntarily owns splitters in its central offices. Sprint Init. Br. at 24. AT&T agrees, but contends that Sprint's proposal does not go far enough. In fact, for the above reasons, Ameritech should be *required* to own and deploy splitters in its central offices.

3. No Party Contends That The Splitter Is A UNE; Rather, It Is Part Of The Loop Functionality.

Ameritech also argues that the splitter is not a UNE and, even if it was, it does not meet the "necessary and impair" standard necessary for it to qualify as a UNE. Amer. Init. Br. at 58-61. Ameritech's argument is irrelevant because, as AT&T witness Mr. Turner testified, AT&T does not contend that the splitter is a UNE. Rather, it is part of the attached electronics of the loop, which *is* a UNE and, according to the FCC, does meet the "necessary and impair" standard. *UNE Remand Order*, ¶¶162-201. Ameritech's reference to the Commission's Order in ICC Docket Nos. 00-0313 and 00-0313 (consol.) is likewise irrelevant because that Order's finding that Ameritech is not required to provide the splitter is based on the conclusion that the splitter is not a UNE because it does not meet the "necessary and impair" standard. Again, no party to this proceeding contends that the splitter is a UNE. Thus, Ameritech's arguments are inapposite. The bottom line remains the same: unless Ameritech provides the splitter, it cannot meet its obligation to provide the full features, functions and capabilities of the

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[14] *Id.* ¶ 79.

[15] *Id.* ¶ 79; *see id.* ¶¶ 77-79.

UNE-P loop – including its high frequency spectrum -- to UNE-P CLECs in order to provide all services the loop is capable of providing, including xDSL service. Thus, Ameritech's arguments must be rejected.

4. Ameritech's Refusal To Provide Line Splitting Will Impede Competition.

Moreover, unless Ameritech is required to provide splitters, it will obtain an insuperable first-mover advantage that will foreclose meaningful residential voice competition for customers who also want data service and seriously impair competition in the markets for data service and voice service (both local and long distance) as well. Ameritech devotes one whole paragraph to the competitive impact that its refusal to deploy splitters will have, making a blanket statement that requiring line splitting will discourage new voluntary offerings. Amer. Init. Br. at 61. Again, this is Ameritech's tired and canned -- yet unsubstantiated -- "take its ball and go home" argument. Ameritech skirts the fact that it is discriminatory to provide splitters for line sharing but not for line splitting, despite the fact that the two are technically identical (Tr. 467; AT&T Ex. 1.0, pp. 7-8, 14, 19-21, 25; AT&T Schlackman Cross Ex. 1, p. 21) by simply arguing that it all treats all data CLECs wanting to engage in line sharing the same. Amer. Init. Br. at 58. Never mind the fact that it simply ignores the UNE-P CLECs wishing to partner with one of those same data CLECs to compete with the bundled voice and data offerings provided by Ameritech.

In stark contrast to Ameritech Illinois' support, Staff and AT&T have conclusively demonstrated that Ameritech's proposal requiring CLECs to collocate splitters creates substantial problems that will "unnecessarily delay competition in the market for bundled voice and data services." Staff Init. Br. at 14. As Staff further notes, "since many data CLECs rely upon Ameritech to provide the splitter, the number of data CLECs with which a UNE-P provider can partner in order to offer advanced services would be severely limited if Ameritech's proposal were adopted." *Id.* As AT&T also noted in its Initial Brief, Ameritech's proposal would require a multi-step process involving lengthy and costly collocation and several separate service orders (including disconnection of the current UNE-P arrangement and potential disruption in service) in order for a UNE-P CLEC voice provider to provide both data and voice service over the same loop. AT&T Init. Br. at 18; Tr. 705-715, 724. This assumes, of course, that the same loop can be used for both services which, as Ameritech concedes, is not guaranteed, in which case a second loop must be purchased. Tr. 708. The Commission must reject Ameritech Illinois' approach, which will result in unequal quality, unequal service, and a nearly insurmountable competitive advantage to Ameritech Illinois in the voice and advanced services marketplace.

5. Ameritech's Line Splitting Proposal Unnecessarily Burdens CLECs.

Ameritech Illinois also claims that a requirement obligating it to provision splitters (for line sharing or line splitting) creates "significant" operational burdens upon it, particularly because it would require Ameritech Illinois to "coordinate the [maintenance issues and] activities of three carriers: Ameritech Illinois, AT&T, and the data provider." Ameritech Init. Br. at 62-63. That this is the sum total of Ameritech Illinois' argument on this point is an obvious admission that its position lacks merit. Moreover, even a cursory examination of the basis for this statement reveals that it is a house of cards waiting to collapse.

Ameritech Illinois' Initial Brief cites only to the testimony of a single witness, Ms. Chapman, in support of the claim that Ameritech Illinois would be operationally burdened by an obligation to provide a splitter to CLECs using UNE-P. Ironically, Ms. Chapman testified that SBC is on record as having told the FCC that it considered the opportunity to provision splitters to CLEC partners a potential business opportunity that it would pursue, creating the impression that the FCC need not assert itself in this regard. Tr. 822.[16] Thus, on the one hand, Ameritech Illinois is claiming that any obligation to provide line splitting would be operationally burdensome. But, on the other hand, those operational impediments apparently disappear if Ameritech Illinois (or SBC) is paid the price it demands when and if it determines to "pursue this business opportunity." Moreover, as Staff aptly pointed out, Ameritech will not be unduly burdened by being required to extend the splitter offering to carriers that do not line share with it since it has already installed splitters in almost all of its Illinois central offices. Staff Init. Br. at 14. The Commission should avoid basing any decision on such a meager and conflicted record.

D. Ameritech Should Be Required To Continue To Provide Data Services In The Event The Customer Changes Voice Providers.

Ameritech's Initial Brief fails to address AT&T's argument that Ameritech should be required to continue to provide data service to a customer that moves its voice service

[16] As Ms. Chapman admitted during hearing, however, SBC only wishes to partner if it can charge "market based rates." Tr. 728-732. SBC never mentioned this point, however, to the FCC when it gushed that it would pursue this "business opportunity" with CLECs. Tr. 731.

to a UNE-P voice provider. While AT&T strongly urges the Commission to interpret this silence as an acquiescence in AT&T's position, to the extent it does not, AT&T respectfully requests that the Commission make an affirmative finding that Ameritech is required to continue to provide data services to an end user customer when the customer switches its voice service to a UNE-P provider. By ordering Ameritech to continue to provide data service, this Commission can prevent Ameritech from unlawfully tying its control over data services to an unwanted voice service. Otherwise, Ameritech could use the threat of discontinuance of its data service to dissuade customers from changing to another voice provider. Requiring line splitting, on the other hand, will increase the variety of choices available to consumers and it therefore is in the interests of customers and competition.

CONCLUSION

For all the above reasons, AT&T's line splitting proposal is consistent with and, in fact, required by federal law, and is necessary to ensure that UNE-P providers are able to compete on a level playing field in the provision of advanced services. Thus, this Commission should require Ameritech to tariff line splitting as proposed by AT&T.

Respectfully submitted,

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